

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

FILED

2003 FEB 27 A 10:51

In Re:

Michael S. Heath,

Janetta C. Heath,

Debtors

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BK No. 02-13892-JMD

Chapter 13

Hearing Date: March 26, 2003

Time: 10:00 am

MOTION TO SELL REAL ESTATE

NOW COME the debtors, Michael S. and Janetta C. Heath, by and through their attorney, Gerald D. Neiman, Esq., and request this Court's authorization to sell their home and to exempt the net proceeds of the sale as their homestead, and states as follows:

1. This Court has exclusive jurisdiction over the property in question under 28 U. S. C. Section 1334. This is a core matter.
1. The Debtors currently reside at 182 Richmond Road, Troy, NH 03465.
2. The Debtors properly listed the real property on their schedules and claimed a homestead exemption in the real property.
3. The Debtors are unable to maintain current payments on the mortgage and wish to sell their home.
4. The Debtors have sought this Court's authorization for the employment of a real estate agent for the purpose of listing the real property for sale.
5. At present, the Debtors have received a bona fide offer to purchase the real estate for \$185,500.00; which offer the Debtors have accepted, subject to this Court's approval of the sale. (See: Sales Agreement and Deposit Receipt attached as Exhibit A.)

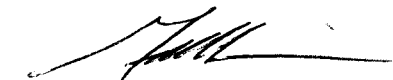
6. The Debtors believe the real property is presently worth approximately \$185,500.00.
7. Said real estate is encumbered by mortgages held by Bank One in the amount of approximately \$37,455.00 and a mortgage held by Dovenmuehle, Inc., in the approximate amount of \$97,470.00.
8. After payment of the liens and all necessary and ordinary closing costs, including the real estate agent's commission in the approximate amount of \$11,130.00 (6% of the sale price), and N.H. State transfer taxes in the approximate amount of \$1,392.00, the Debtors expect to net an amount less than \$38,053.00.
9. The net amount of the sale of the Debtors' residence is exempt from trustee process and attachment pursuant to their Homestead Exemption. N.H. RSA 480:1.
10. Such a sale will realize the full value of the home, will not prejudice the rights of any party, and will allow those lienholders with liens which are not avoidable to realize their security.

WHEREFORE, Debtor prays that this Court enter an Order permitting the sale of the Debtors' home, the proceeds being applied first to payment of outstanding mortgages, and closing costs and the remaining portion of that share, if any, paid to the Debtors as their homestead exemption, and for such other relief as may be just.

Respectfully submitted,

Dated: Feb. 25th, 2003

By:


Gerald D. Neiman, Esq.
234 Court Street
Keene, NH 03431
(603) 357-3777
BNH# 03902

SALES AGREEMENT and DEPOSIT RECEIPT

THIS AGREEMENT made this 12 day of February, 20 03

Between

The SELLER HEATH, MICHAEL & JANETTA
of 182 Richmond Road City Troy County of Cheshire State NH Zip _____

and

The BUYER Jessica Mullaney & Douglas Carbone
of 89 Herbert Road City Braintree County of Essex State Ma Zip 02184WITNESSETH: That the SELLER agrees to sell and convey, and the BUYER agrees to buy certain real estate located in
City / Town of Troy NH. known as or described as182 Richmond Road all land and buildings there on.County Cheshire Book 1622 Page 0699 Date _____The SELLING PRICE is One hundred eighty five thousand five hundred Dollars 185,500.00
Deposit, receipt of which is hereby acknowledged, in the form of Check
Is to be held in an escrow account by ERA Masiello Group/Keene in the sum of \$ 500.00
Additional deposit will be paid on or before acceptable home inspections in the sum of \$ 1000.00
CASH, CERTIFIED CHECK or BANK DRAFT on date of transfer of title in the sum of \$ 184,000.00DEED: Marketable title shall be conveyed by a Warranty deed, and shall be free and clear of
all encumbrances except usual public utilities serving the property; any restrictive covenants of record to be acceptable to the buyer.TRANSFER OF TITLE: On or before March 26, 2003 at Attorney's office.
Registry of Deeds, Lending Institution, or some other place of mutual consent.POSSESSION: Free of all tenants, personal property, and encumbrances except as herein stated is to be given on transfer of title or
tenant may stay.AGENT: The undersigned SELLERS and BUYERS understand that ERA Masiello Group/Keene Agency
represents the SELLER, and No Agency represents
Buyer in this transaction.INSURANCE: The buildings on said premises shall, until full performance of this agreement, be kept insured against fire, with
extended coverage by the SELLER. In case of loss, all sums recoverable from said insurance shall be paid or assigned, on delivery of
deed, to the BUYER, unless the premises shall previously have been restored to their former condition by the SELLER; or, at the
option of the BUYER, this agreement may be rescinded and the deposit refunded if any such loss exceeds \$ 5,000.00.TITLE: If, upon examination of title, it is found that the title is not marketable, the SELLER shall have a reasonable time, not to
exceed 30 days from the date of notification of defect (unless otherwise agreed to in writing), to remedy such defect. Should the
SELLER be unable to provide marketable title within said 30 days, the BUYER may rescind this agreement at the BUYER's sole
option, with full deposit being refunded to the BUYER and all parties being released from any further obligations hereunder. The
SELLER hereby agrees to make a good faith effort to correct the title defect within the 30 day period above prescribed once
notification of such defect is received. The cost of examination of the title shall be borne by the BUYER.

TAXES, condo fees, special assessments, rents, water and sewage bills and fuel in storage shall be prorated as of transfer of title or

SELLER (S) INITIALS MASH / JCHBUYER (S) INITIALS JM / DC

PROPERTY INCLUDED: All fixtures Electric stove, Frig., Dish washer, SecSystem, Microwave, CntrVac., Coal Stove.

In Compliance with the requirements of RSA 477:4-a, the following information is provided to the BUYER relative to Radon Gas and Lead Paint:

RADON GAS: Radon gas, the product of decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.

LEAD PAINT: Before 1978, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.

Disclosure Required ☒ YES ☐ NO

BUYER acknowledges receipt of Seller Property Information Report attached hereto and so signifies by initialing here

INSPECTIONS: The BUYER is encouraged to seek information from professionals normally engaged in the business regarding any specific issue of concern. The Agent makes no warranties or representations regarding the condition, permitted use or value of the SELLER's real or personal property. This contract is subject to the following inspections, with results being satisfactory to the BUYER:

TYPE OF INSPECTION:	YES	NO	RESULTS TO SELLER	TYPE OF INSPECTION:	YES	NO	RESULTS TO SELLER
a. General Building	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>15</u> Days	f. Lead Paint	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>15</u> Days
b. Sewage Disposal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>15</u> Days	g. Pests	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>15</u> Days
c. Water Quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>15</u> Days	h. Hazardous Waste	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within <u> </u> Days
d. Radon Air Quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>15</u> Days	i. <u> </u>	<input type="checkbox"/>	<input type="checkbox"/>	within <u> </u> Days
e. Radon Water Quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>15</u> Days	j. <u> </u>	<input type="checkbox"/>	<input type="checkbox"/>	within <u> </u> Days

The use of days is intended to mean calendar days from the effective date of the contract. All inspections will be done by professionals normally engaged in the business, to be chosen and paid for by the BUYER. If the results of any inspection or other condition specified herein reveal significant defects which were not disclosed or previously known to the BUYER, the SELLER shall have the option of repairing the unsatisfactory conditions(s) prior to transfer of title if the BUYER and SELLER both agree, failing which the BUYER may terminate the contract and all deposits shall be returned to the BUYER. Notification in writing of intent to so repair should be delivered to the BUYER or BUYER's Agent within five (5) days of receipt by the SELLER of notification of unsatisfactory conditions(s). Should the SELLER elect not to repair such unsatisfactory conditions, the BUYER may declare the contract null and void by notifying the SELLER in writing within five (5) days of receipt of SELLER's election not to repair, and any earnest money shall be returned to the BUYER. If the BUYER does not notify the SELLER that an inspection is unsatisfactory within the time period set forth above, this contingency is waived by the BUYER. In the absence of inspection mentioned above, the BUYER is relying completely upon the BUYER's own opinion as to the condition of the property.

BUYER HEREBY ELECTS TO **WAIVE THE RIGHT TO ALL INSPECTIONS** AND SIGNIFIES BY INITIALING HERE

LIQUIDATED DAMAGES: If the BUYER shall default in the performance of their obligation under this agreement, the amount of the deposit may, at the option of the SELLER, become the property of the SELLER as reasonable liquidated damages. In the event of any dispute relative to the deposit monies held in escrow, the Escrow Agent may, in its sole discretion, pay said deposit monies into the Clerk of Court of proper jurisdiction in an Action of Interpleader, providing each party with notice thereof at the address recited herein, and thereupon the Escrow Agent shall be discharged from its obligations as recited therein, and each party to this Agreement shall thereafter hold the Escrow Agent harmless in such capacity. Both parties hereto agree that the Escrow Agent may deduct the cost of bringing such Interpleader action from the deposit monies held in escrow prior to the forwarding of same to the Clerk of such court.

SELLER (S) INITIALS

BUYER (S) INITIALS

PRIOR STATEMENTS: Any verbal representation, statements and agreements are not valid unless contained herein. This agreement completely expresses the obligations of the parties.

FINANCING: This agreement (X is) (is not) contingent upon the BUYER obtaining financing under the following terms:

AMOUNT 97% LTV TERM/YEARS 30 RATE Current
TYPE OF MORTGAGE Conventional

The BUYER agrees to act diligently and in good faith in obtaining such financing and shall, within 5 calendar days, after the SELLER's written acceptance, submit a complete and accurate application for mortgage financing to at least one financial institution currently providing such loans, requesting financing in the amount and on the terms provided in this agreement. If the BUYER does not make application within the specified number of days, or if the BUYER fails to provide written financing commitment or written evidence of inability to obtain financing acceptable to SELLER by March 12, 2003, TIME BEING OF THE ESSENCE, the financing contingency shall lapse, and SELLER shall have the option of declaring the BUYER in default. In the event written evidence of inability to obtain financing is provided by the above date, this agreement shall become null and void, and SELLER hereby authorizes escrow agent to return BUYER's deposit in full. The responsibility to provide SELLER with written evidence, as above, shall be solely the BUYER's.

EFFECTIVE DATE: This is a binding contract and the effective date is when signed and dated, whether by electronic transfer or original, and all changes initialed and dated, by the SELLER and the BUYER.

ADDITIONAL PROVISIONS:

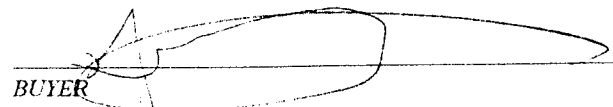
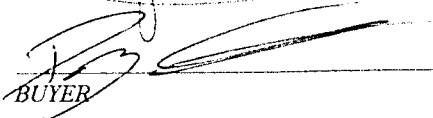
Property to be left in broom swept condition.

Final walk-thru within 24 hours of closing to verify that property is in substantially the same condition as seen on February 12, 2003.

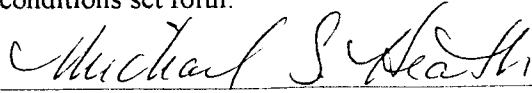
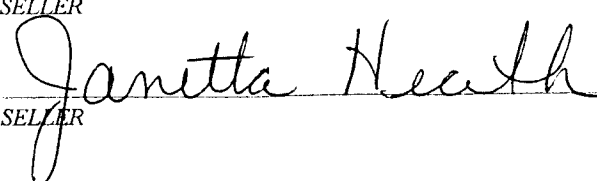
Contingent upon the approval of the Federal Bankruptcy Court. with JCH

A copy of this contract is to be received by all parties and, by signature, receipt of a copy is hereby acknowledged. This agreement shall be binding upon the heirs, executors, administrators and assigns of both parties.

IF NOT FULLY UNDERSTOOD, PARTIES ARE ADVISED TO CONTACT AN ATTORNEY.

 BUYER	<u>2/12/03</u> DATE	<u>033642247</u> SOCIAL SECURITY #
 BUYER	<u>2/12/03</u> DATE	<u>020-62-4516</u> SOCIAL SECURITY #

The SELLER accepts the offer and agrees to deliver the above-described property at the price and upon the terms and conditions set forth.

 SELLER	<u>02/18/03</u> DATE	<u> </u> SOCIAL SECURITY #
 SELLER	<u>2/18/03</u> DATE	<u> </u> SOCIAL SECURITY #

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FILED

CERTIFICATION

I hereby certify that a copy of the within Motion to Sell Real Estate has been
forwarded this day to:

Lawrence P. Sumski
294 Route 101, Unit 7
Amherst, NH 03031
- as Chapt. 13 Trustee

Geraldine L. Karonis, Esq.
U. S. Trustee Office
66 Hanover Street, Suite 302
Manchester, NH 03101

Matthew Clark
ERA The Masiello Group
69A Island St.
Keene, NH 03431

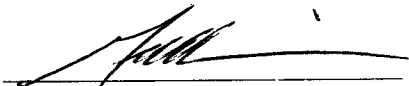
CLERK OF THE
BANKRUPTCY COURT
DISTRICT OF NH
Harmon Law Offices, P.C.
78 West Merrimack St.
Manchester, NH 03101

Bank One
PO Box 2071
Milwaukee, WI 53201-2071

Dovenmuehle, Inc.
1501 Woodfield Rd.
Schaumburg, IL 60173-4983

Vincent A. Wenners, Jr.
Craig, Wenners, Craig and Capuchino
84 Bay Street
Manchester, NH 03104

Date: February 25th 2003


Gerald D. Neiman, Esq.
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